



Supreme Court of Wisconsin

OFFICE OF LAWYER REGULATION

GRIEVANCES INVOLVING WISCONSIN LAWYERS

Lawyers Must Maintain High Standards

The Supreme Court of Wisconsin has authority over all attorneys licensed to practice law in the State of Wisconsin. The Supreme Court has established rules governing attorney conduct and has charged the Office of Lawyer Regulation with responsibility for investigation of grievances against attorneys.

The procedures for dealing with your grievance are designed to provide a thorough review of the matter and to resolve it in a way that is fair both to the public and to the lawyer involved. Like most people, most lawyers are reputable and sincere. They try to do all they lawfully can on behalf of their clients. If a lawyer engages in unethical conduct, it is our responsibility to do something about it. The word grievance is used to describe any complaint about or dissatisfaction with a lawyer.

Ethics and Discipline

All lawyers promise when they are licensed to uphold the law and to be guided by rules of ethics adopted by our state Supreme Court. A lawyer who violates these standards of professional conduct may be required to take certain remedial measures, meet required conditions, or be disciplined. In very serious matters, discipline could mean suspension of the attorney's license to practice law or even its revocation.

Discipline of a lawyer or conditions on a lawyer's practice must be considered very carefully since it may drastically affect the lawyer's career, reputation and ability to earn a living. You can understand, therefore, that it takes more than a claim of unethical conduct to justify the imposition of discipline or other conditions. It takes evidence – proof of unethical conduct – to justify discipline of a lawyer, just as it takes proof before any member of society may be penalized for wrongdoing.

And it must be unethical conduct. An honest disagreement about how a case should be handled – or should have been handled – does not constitute unethical conduct. Neither does a mistake. Lawyers are human and sometimes make a mistake. If it causes a loss, the client may be able to recover the loss from the lawyer. If you believe a lawyer has wrongfully or negligently harmed you, you may consider consulting with another attorney about the possibility of making a malpractice claim against the lawyer. We cannot offer legal advice on the merits of a claim of malpractice. But a mistake or an error in judgment is not unethical conduct.

There are situations that a client may find most annoying that do not necessarily constitute unethical conduct. An example would be the lawyer's failure to immediately respond to a client's telephone call inquiring about the progress of a case.

Unethical conduct, then, means wrongdoing – a violation of a profession's code of ethics – which can be proven.

Filing a Grievance

While the filing of a grievance against a lawyer is a serious matter that should not be undertaken lightly, you need not be an expert on the legal profession's ethical standards before seeking help from this office. If you believe that your lawyer has acted unethically, and if your efforts to clear up the matter with the lawyer have not been successful, you should file a grievance.

We provide a trained staff who will determine at no cost to you whether your charges, if proven, amount to unethical conduct warranting conditions or disciplinary action.

Grievances may be submitted in writing, addressed to this office. Grievances are also accepted by telephone (see address and phone numbers on last page). No special language or form is necessary. However, we do have an optional form that you may wish to use. The grievance should be submitted as soon as you become aware of the problem, while everyone's recollection of the events is fresh and before any pertinent documents are lost or destroyed. Grievances filed more than 10 years after the time that you knew about the attorney's conduct, or reasonably should have known about the conduct, will not be accepted.

A written grievance should include all important information, including dates, and if possible, it should be typewritten or printed to be sure it is legible. If letters, agreements or other documents are involved, copies should be included if available. You should know that a copy of the grievance and all documents attached to the grievance will be sent to the attorney who is the focus of the grievance.

Since this office is established for the precise purpose of evaluating grievances involving lawyers, you should not fear that your good faith inquiry will be resented or that you will be harassed or intimidated. All inquiries are not only accepted but encouraged by the profession as a whole. In fact, while a non-lawyer has the right to file a grievance and may do so if he or she wishes, a lawyer who learns of unethical conduct by another lawyer may be required to report it.

Initial Review

Wisconsin attorneys are required to cooperate fully with investigations conducted by this office. Failure to do so is itself grounds for discipline, regardless of the merits of the original grievance. Often, replying to a grievance requires considerable time and effort on the part of the attorney. Therefore, mere accusations, unaccompanied by documentation or records, are examined very closely. You may be asked to describe in greater detail the circumstances of your grievance or to provide further documents. You should not be discouraged by such a request. Our interest is in developing as complete a record as possible and in determining whether the conduct that is alleged falls within the rules that govern attorney conduct.

To determine whether or not your grievance involves unethical conduct, we conduct a careful review. The grievance will first be reviewed by an investigator who is specially trained in the area of professional ethics. If there is an initial determination that the grievance comes under this office's jurisdiction, an investigation will be commenced. If the grievance does not allege potential misconduct, you may be referred to another agency. Some of the things we frequently find are not within our jurisdiction are:

Fee Disputes: Fee disputes are not ordinarily a basis for discipline of a lawyer because they usually do not involve questions of ethics or professional misconduct. In some cases they do, however, and in those cases where the attorney is found to have acted unethically, discipline will result. Most fee disputes result from a lack of understanding by the client on the basis for the fee and the factors that go into the charge made by a lawyer for services. The lawyer is often at fault because he or she fails to make the client aware of what is involved. Clients are often reluctant or embarrassed to discuss fees with their lawyer. They should not be, and such discussion is encouraged.

Where the lawyer and client are not able to reach an understanding in a dispute over fees, the matter, like any other dispute over the value of services, may be resolved by court action. The Director may also recommend fee arbitration and forward the matter to the State Bar of Wisconsin. The State Bar has a fee arbitration committee. The committee has established procedures that frequently lead to a resolution of the dispute. They will send information explaining their procedures. If unethical conduct is revealed during the course of fee arbitration, the attorneys serving as arbitrators have an ethical duty to report that misconduct to this office for

investigation. Inquiries about fee arbitration should be directed to the State Bar of Wisconsin, P.O. Box 7158, Madison, WI 53707-7158.

Judicial Conduct: Some grievances involve the conduct of judges and court commissioners. We refer those matters to the Judicial Commission, which has jurisdiction over judicial conduct. Inquiries about judicial conduct should be directed to the Judicial Commission at 110 E. Main Street, Room 606, Madison, WI 53703.

Investigation

When the initial evaluation indicates a grievance could potentially involve misconduct, we begin an investigation. Often, more information is needed to fully evaluate the grievance. The grievant, the attorney or third parties may be contacted in order to obtain the additional information. Most investigations are completed by members of this office.

In some cases the Director obtains investigative assistance from a District Investigative Committee. There are 16 district committees throughout the state. The membership includes non-lawyers and lawyers who donate their time for this service. The committee may meet with the lawyer and you and any relevant witnesses to aid its investigation. The findings from that investigation along with any recommendation the committee makes are returned to this office.

Potential Outcomes

When all of the needed information is obtained, staff will make a recommendation as to the appropriate disposition of the grievance, and report their findings to the Director, who will make a decision as to what further action is required. If there is insufficient evidence of unethical conduct, the Director will dismiss the matter.

The Director may, with the attorney's consent, impose a private or public reprimand or require the attorney to participate in an alternatives to discipline program. If the attorney does not consent to the proposed action, or if the Director believes there is clear and convincing evidence of serious misconduct that would potentially result in a suspension or revocation of the attorney's license, the Director will present the matter to a panel of the Preliminary Review Committee.

The Preliminary Review Committee is an independent committee appointed by the Wisconsin Supreme Court and consists of fourteen members, nine lawyers and five non-lawyers, who come from all parts of the state. Their diverse backgrounds and experiences help to assure fair and consistent treatment of misconduct throughout the state. The committee divides itself into two rotating panels consisting of lawyers and non-lawyers. A panel will carefully review the matter presented by the Director and determine whether there is cause to proceed to more formal disciplinary action. If the panel finds cause to proceed, the Director will then determine the appropriate action to take.

If a Complaint is Filed with the Supreme Court

If the Preliminary Review Committee has found cause to proceed and the Director seeks revocation or suspension, or seeks to impose other discipline or conditions on practice to which the attorney has declined to consent, a complaint is filed with the Supreme Court. This begins a lawsuit. The procedure is very similar to that followed in the trial of a civil (non-criminal) lawsuit. The accused lawyer can file a written answer and motions. A hearing is scheduled. The Director, through counsel, presents the evidence of misconduct. This evidence will usually include testimony from the person complaining, other witnesses and relevant documents. The accused lawyer has a full opportunity to defend the case by presenting evidence and cross-examining the Director's witnesses.

The case is heard by a referee who acts as a judge. The referee comes from a permanent panel of referees appointed by the Supreme Court to hear lawyer disciplinary actions. At the conclusion of the hearing the referee can recommend discipline. The accused attorney or the

Director can appeal, or the Supreme Court will review without an appeal. Only the Supreme Court can suspend or disbar an attorney.

How Long Does It Take?

The foregoing description of disciplinary proceedings has been simplified and generalized. Most cases fit within these procedures. However, each case is unique and must be decided on its own facts. These facts determine the ultimate disposition of each case. Further, this explanation does not attempt to describe all the steps which are possible in a particular case.

The procedure will take time, and in some instances a rather long time. It's difficult to predict just how long it will take to deal with any particular grievance. Much depends on the nature of the grievance, and whether the facts are disputed. Every additional step adds time. Some cases are resolved in a matter of weeks. Most require several months. A few cases, particularly those where a hearing before a referee and appeal to the Supreme Court are involved, may take a year or two.

While we cannot tell you how long it will take to deal with your grievance, we want to assure you that we will handle it as quickly as possible and that you will be notified of the outcome. You will receive some further communication from this office with respect to your grievance after we complete the initial review.

Will My Grievance Become Public Information?

When a public reprimand is issued or a complaint is filed with the Supreme Court, the disciplinary action becomes a matter of public record. Prior to that time, or if a grievance results in any other disposition, grievance proceedings are confidential, pursuant to rules and procedures adopted by the Supreme Court.

Some Things You Should NOT Expect

You should not expect that your grievance will be decided solely on the basis of what you claim to have happened, just as, in fairness to you, the lawyer about whom you complained cannot expect that the matter will be decided solely on the basis of his or her version. The final decision must depend upon the weight of all the available evidence and testimony.

You should not expect, as a result of your grievance, that you will receive any money or reimbursement of loss, although in certain cases the Director or Supreme Court may require restitution of funds improperly taken by the attorney as a condition of discipline. You should nevertheless consider pursuing recovery of any monetary or property loss you may claim by the usual civil means. You should not expect this office to provide you with legal advice or legal services, either in place of the services you expected from your lawyer, or in connection with any possible claim for damages you may have against the lawyer. Lawyer disciplinary proceedings are restricted to the question of a lawyer's ethical fitness to practice law.

What You CAN Expect

Your grievance will receive prompt and full attention. Every attempt will be made to deal with the grievance in a manner that is fair both to you and to the lawyer involved. Written notice of the final decision concerning your grievance will be sent to you and the lawyer. If you disagree with the final decision, you will be afforded one opportunity to appeal. Grievance forms, copies of the disciplinary and administrative rules and other information regarding this agency can be obtained through the Supreme Court's website at www.wicourts.gov/olr

Address correspondence to:

Office of Lawyer Regulation
110 East Main Street, Suite 315
Madison, WI 53703-3383
Telephone 877-315-6941 (toll free)
or 608-267-7274
www.wicourts.gov/olr

Information Sheet 1/27/05